

AMERICA'S
PUBLIC
TELEVISION
STATIONS

EX PARTE OR LATE FILED

April 5, 1999

98-120

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: MM Docket No. 98-203 and CS Docket No. 98-120
Ex Parte Notice

Dear Ms. Roman Salas:

The Association of America's Public Television Stations ("APTS") hereby notifies the Commission of the following ex parte meeting in the above-captioned proceedings on ancillary and supplementary use of digital spectrum and digital must carry. The meeting occurred on April 2, 1999, and was attended by Lonna Thompson, APTS, and Marilyn Mohrman-Gillis, APTS. We met with the following persons:

Commissioner Harold Furchtgott-Roth
Helgi C. Walker, Legal Advisor to Commissioner Harold Furchtgott -Roth
Anita Wallgren, Legal Advisor to Commissioner Susan Ness

APTS highlighted the position stated in their comments and reply comments in response to the Commission's notice in the above-captioned proceedings as summarized in the attached handouts.

Should any questions arise concerning this meeting, please contact the undersigned.

Respectfully submitted,

Marilyn Mohrman-Gillis

Marilyn Mohrman-Gillis
Vice President, Policy and Legal Affairs
Association of America's Public Television Stations

cc: Honorable Harold Furchtgott-Roth, Commissioner
Honorable Susan Ness, Commissioner
Anita Wallgren, Legal Advisor
Helgi C. Walker, Legal Advisor

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3. Public television is proposing reasonable digital cable rules.
 - APTS supports must-carry rules that require cable operators during the transition to carry a qualified public television station's digital signal as soon as the station begins digital broadcasting.
 - Waivers of this general rule would be permitted in limited circumstances involving hardship situations during the early years of the transition period.
 - But, a cable system would not be entitled to a waiver where it had unused channels as of, or after, July 10, 1998 (the date of the FCC notice of proposed rulemaking), or where it had added capacity since that date.
 4. Carriage of the digital signal along with the analog signal during the transition period will not create an undue burden on cable systems.
 - Many cable systems are already in the process of upgrading their facilities to increase capacity.
 - Any alleged current lack of capacity is attributable solely to the business decisions cable companies have made to carry additional data services, shopping services, telephony services, and video on demand.
 - Compression techniques reduce the alleged burden on cable systems.
 - The gradual rollout of public television digital channels will minimize burdens on cable.
 - Cable companies can employ unused public, educational and governmental channels to carry digital signals.
 - Real hardship cases can be addressed through an exemption or waiver process.
 - Some cable-owned or operated networks, most notably C-SPAN, have complained that the competition for scarce cable resources will cause such networks to be dropped by cable operators. This is unlikely, because networks such as C-SPAN are either owned or subsidized by cable companies. If cable carriage of public television's digital broadcasts during the transition in fact causes some cable systems to drop C-SPAN or C-SPAN 2, public television stations may find it feasible to carry these networks on their multicast channels.
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DIGITAL MUST CARRY

1. Public television stations will use their digital channels to expand and enhance noncommercial educational services.
 - Public television stations, in a systemwide strategic planning effort, identified a unique vision for use of digital channels to serve the public.
 - Public broadcasters are committed to using their digital channels to:
 - improve and expand early childhood services, including the Ready to Learn service;
 - integrate digital technology in K-12 education;
 - provide adult and workforce education and training;
 - expand availability of digital services to underserved citizens, e.g. physically challenged and non-English speaking people.
2. Digital cable carriage rules are essential to enable public television to reach its vision of providing noncommercial educational digital signals to the American public.
 - Cable systems are monopolies from which 67 percent of American viewers exclusively get their television service.
 - Cable companies have said that they will not carry public television's digital broadcasts during the transition unless forced to by the FCC.
 - Cable companies refused to carry public television stations' analog channels in the 1980s leading to the must-carry requirements in the Cable Act affirmed by the Supreme Court.
 - Cable companies have always had and continue to have economic incentives to prefer cable-owned or subsidized networks over broadcast networks.

Without digital cable carriage rules --

- the American public will be deprived of noncommercial educational digital services;
- public television will have difficulty obtaining funding for the digital transition; and
- the transition to digital will be severely disadvantaged.

ANCILLARY AND SUPPLEMENTARY USE OF DIGITAL SPECTRUM

The position outlined below reflects the consensus recommendation of the APTS Legislative Advisory Group adopted by APTS Board of Trustees and incorporated into comments filed by APTS with the FCC on February 16, 1999 and reply comments filed on March 16, 1999.

1. We are asking the Commission to extend, in a digital environment, the same restrictions currently operating on public television in an analog environment:
 - The channel must be used "primarily" for a noncommercial, nonprofit, educational service (Section 73.621(a) of the Commission's rules).
 - Any ancillary and supplementary service provided by the station to generate revenue may not interfere with the station's provision of its public telecommunications service (Section 399B of the Communications Act).
2. As long as stations meet these tests, they should be permitted to provide ancillary and supplementary services to generate revenue.
 - Public television stations traditionally operate with a variety of funding sources from federal, state and private sources.
 - Even with federal funding for the digital transition, stations must have the ability to use excess capacity to generate revenue to support expanded and enhanced digital services on an ongoing basis.
3. The Commission need not impose further restrictions on public television stations' use of their digital channel at this time.
 - Stations have external constraints that will direct the use of their channels.
 - Stations are governed by local governing boards and state law.

- Stations are nonprofit entities. As such
 - they must engage primarily in activities that further the exempt purpose;
 - they must pay taxes on any for-profit activities they engage in; and
 - for-profit activities may not become disproportionately large in relation to their primary activities or they run the risk of losing their nonprofit status and subsequently losing their noncommercial license.
 - Stations are committed to expanding and enhancing their educational services on their digital channel.
 - Restrictive FCC rules are premature. The FCC should allow for stations to explore the full range of ancillary and supplementary revenue generating opportunities that may be available. If any station engages in activities of concern to the FCC, it can address those on a case-by-case basis.
4. Permitting advertiser supported broadcast and nonbroadcast ancillary and supplementary services does not violate the Communications Act.
- 399B prohibits a public television station from “making its facilities available to any person for the broadcasting of any advertisement.”
 - The Commission has permitted the transmittal of advertiser supported ancillary and supplementary services in the vertical blanking interval (VBI) of the analog channel notwithstanding 399B.
 - We are asking the Commission to determine, consistent with the analog context, that 399B does not apply to ancillary and supplementary digital services.
 - The purpose behind 399B—to allow public television to generate revenue while insulating “program control and content from the influence of special interests”—will be served, not violated, by advertiser-supported ancillary and supplementary services.